



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

May 15, 2008

Mr. Carley Keck  
P. O. Box 67  
Seymour, TN 37865

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7007 2560 0003 3385 7565**

Subject: DIRECTOR'S ORDER NO. WPC08-0120  
WILDWOOD GARDENS UNIT 6  
KNOX COUNTY, TENNESSEE

Dear Mr. Keck:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Stephanie Fisher at (615) 532-3634.

Sincerely,

Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:SJF

cc: DWPC – EFO-Knoxville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>CARLEY KECK D/B/A</b>	)	
<b>P&amp;CK CONSTRUCTION AND</b>	)	
<b>SHORE BUILDERS, INC.</b>	)	
	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NO. WPC08-0120</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Carley Keck doing business as (dba) P&CK Construction (hereinafter "Respondent Keck") is the owner of a residential development located on Remagen Lane in Knox County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at P.O. Box 67, Seymour, Tennessee, 37856.



### III.

Shore Builders, Inc., (hereinafter "Respondent Shore Builders") is an active corporation licensed to conduct business in the state of Tennessee. Service of process may be made on the Respondent through Samuel E. Shore, Registered Agent, at 2106 Carpenters Grade Road, Maryville, Tennessee, 37803.

### JURISDICTION

### IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

## V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondents have violated the Act.

## VI.

The unnamed tributary to Stock Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” Stock Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Stock Creek and its unnamed tributaries are listed as impaired due to physical substrate habitat alterations, *Escherichia coliform*, and siltation as a result of channelization and grazing in riparian or shoreline zones.

## VII.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.



## VIII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## FACTS

## IX.

On October 16, 2006, Respondent Keck submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP for land disturbance activities at the site. On January 9, 2007, the division issued the Respondent coverage under the TNCGP and assigned tracking number TNR132264. The coverage became effective on January 9, 2007, and expires upon the division’s receipt of a notice of termination (NOT) or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water runoff associated with construction activity to Stock Creek, in accordance with the TNCGP terms and conditions. Further, the division notified the Respondent that the site was discharging to a stream that has been identified as impaired for siltation and populations of the state-listed species Tennessee Dace (*Phoxinus tennesseensis*) and Tennessee Cave Salamander (*Gyrinophilus palleucus*) have been identified within a five-mile radius of the site.

## **X.**

On August 23, 2007, division personnel conducted a compliance inspection at the site and observed that sediment had migrated into jurisdictional waters causing a condition of pollution. Eight to ten inches of sediment had accumulated in the unnamed tributary of Stock Creek for a distance of over half a mile. In addition, division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures installed at the site were not in accordance with the SWPPP, the Notice of Coverage (NOC) was not posted on the site, the SWPPP was not available for review, and Respondent Keck failed to maintain a required vegetative buffer zone along the unnamed tributary of Stock Creek.

## **XI.**

On August 31, 2007, division personnel issued a Notice of Violation (NOV) to Respondent Keck for the violations observed during the August 23, 2007, site inspection. The NOV required Respondent Keck to update the SWPPP and to develop and implement a Corrective Action Plan (CAP) in order to mitigate the pollution caused by construction activities at the site. The NOV required that the plan be approved by the Knoxville Environmental Field Office (KEFO) before any remediation work began. The NOV also required the Respondent to stabilize the stream-side buffer zone, update the EPSC measures to correspond with the current SWPPP, post the NOC and SWPPP at the site entrance, store oil and paint containers indoors to comply with the TNCGP, and implement vegetative controls to stabilize inactive areas of the site. The NOV required Respondent Keck to respond in writing within 14 days of receipt of the NOV.



## **XII.**

On October 1, 2007, division personnel conducted a compliance investigation at the site and observed that EPSC measures were not in accordance with the SWPPP and the NOC was not posted at the site. In addition, it was observed that sediment had migrated from the site into the stream, resulting in a condition of pollution in the unnamed tributary of Stock Creek.

## **XIII.**

On October 7, 2007, a CAP was submitted to the KEFO and was approved on October 22, 2007.

## **XIV.**

On December 18, 2007, photographic evidence of newly installed sediment detention ponds, established vegetation, a re-established buffer zone, double rows of silt fence along the stream side buffer, and a diversion ditch along Remagen Lane were submitted to the KEFO to demonstrate that corrective actions were being implemented. Also submitted to the KEFO was a letter from David Musick stating that silt had been manually removed from the creek, and the stream banks were reseeded and strawed, however, no photographs were submitted to show this.

## **XV.**

On January 7, 2008, an updated SWPPP was submitted to the KEFO.

## **XVI.**

On March 4, 2008, division personnel conducted a site inspection and observed that in-stream excavation had been performed by Respondent Shore Builders, resulting in a condition of pollution in the unnamed tributary to Stock Creek. A manhole had been installed in-stream and the excavated material had been stockpiled on the stream bank. The NOC was not posted on-site as required, the SWPPP was unavailable, and EPSC measures had not been properly maintained. Additionally, there was a pile of burned oil filters on the ground along with overturned containers of chemicals.

A subsequent file review determined that Respondent Shore Builders had not requested or been issued authorization under an ARAP for the stream alteration activities noted, nor had Respondent Shore Builders obtained TNCGP coverage.

## **XVII.**

On March 6, 2008, the division received a complaint concerning a lack of control measures being installed, and mud entering a sanitary sewer system at the site.

## **XVIII.**

On March 12, 2008, division personnel conducted a complaint inspection of the site and observed Respondent Shore Builders excavating and installing sewer lines in the unnamed tributary to Stock Creek, while water was flowing. Unconsolidated fill material



was placed back into the unnamed tributary of Stock Creek resulting in sediment deposits downstream resulting in a condition of pollution in the unnamed tributary to Stock Creek. The NOC was not posted and the SWPPP was not available for review.

A subsequent file review determined that Respondent Shore Builders had not requested or been issued coverage under an appropriate ARAP for the stream alteration activities noted, and Respondent Shore Builders had not signed the NOI.

## **XIX.**

On March 17, 2008, division personnel issued NOVs to Respondent Keck and Respondent Shore Builders for the violations observed during the March 12, 2008, complaint inspection. The NOV required the respondents to submit a Corrective Action Plan (CAP), designed by a licensed engineer, in order to eliminate pollution and restore the unnamed tributary to Stock Creek. The NOV required the Respondents to respond in writing, within 14 days of receipt of the NOV, to reference how the issues noted in the March 17, 2008, NOV would be addressed, and the timeframe in which the CAP would be submitted and implemented.

## **XX.**

On May 29, 2008, division personnel conducted a follow up inspection at the site and observed that inches of sediment had been deposited in the unnamed tributary of Stock Creek. In addition, division personnel noted that EPSC measures were not properly maintained, the NOC was not posted on the site, the SWPPP was not available for review,

and chemical containers were observed lying on the ground, not properly stored as required by the TNCGP.

## **XXI.**

During the course of investigation the division incurred DAMAGES in the amount of TWO HUNDRED EIGHTY NINE DOLLARS AND SEVENTY FIVE CENTS (\$289.75)

## **VIOLATIONS**

## **XXII.**

By failing to comply with the terms and conditions of the TNCGP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

T. C. A. § 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;



T. C. A § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

### XXIII.

By altering waters of the state without authorization under an ARAP, the Respondents have violated T.C.A. §§69-3-108(a)-(b), cited below, and 69-3-114(b) as referenced above.

T.C.A. §69-3-108(a)-(b) states, in part:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
  - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
  - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

#### **XXIV.**

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondents have violated T.C.A. §§69-3-114(a), referenced below, and 69-3-114(b), as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

#### **ORDER**

#### **XXV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

1. The Respondents shall, immediately, establish and maintain effective EPSC measures on-site to ensure that sediment is not allowed to leave the site or enter waters of the state. The Respondent shall, within FOURTEEN (14) days of receipt of this Order, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place to the Water Pollution Control manager in the KEFO at 3711 Middlebrook Pike, Knoxville, Tennessee 37921, and a copy to the Water Pollution Control Enforcement and Compliance (E&C)



Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534..

2. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondents shall, within 30 days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the KEFO and a copy to the E&C manager at the addresses at the address listed in Item 1, above.
4. Within 30 days of receipt of this ORDER AND ASSESSMENT the Respondents shall submit a corrective action plan (CAP), designed by a professional engineer, to restore the unnamed tributary to Stock Creek, specifically addressing the removal of sediment and the stabilization of the affected areas. This plan shall, at a minimum, include detailed options for removing the sediment deposits, measures to stabilize stream banks, and a time schedule to identify the proposed activities and the dates required to complete the work. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the KEFO at the address listed in Item 1, above.
5. The Respondents shall, within 60 days of approval from the division, complete the actions outlined in the approved CAP and no additional permitting will be required

for these approved activities. The Respondents shall submit notification of completion to the Water Pollution Control Manager in the KEFO at the address shown in Item 1, upon completion.

6. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT pay DAMAGES to the division in the amount of TWO HUNDRED EIGHTY NINE DOLLARS AND SEVENTY FIVE CENTS (\$289.75).

7. The Respondents shall pay a CIVIL PENALTY of EIGHTY FOUR THOUSAND FIVE HUNDRED DOLLARS (\$84,500.00) to the division, hereby ASSESSED to be paid as follows:

a. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of TWENTY ONE THOUSAND DOLLARS (\$21,000.00).

b. If the Respondents fail to comply with Part XXV, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ELEVEN THOUSAND DOLLARS (\$11,000.00), payable within 30 days of default.

c. If the Respondents fail to comply with Part XXV, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable within 30 days of default.



- d. If the Respondents fail to comply with Part XXV, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ELEVEN THOUSAND DOLLARS (\$11,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXV, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ELEVEN THOUSAND FIVE HUNDRED DOLLARS (\$11,500.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXV, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable within 30 days of default.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

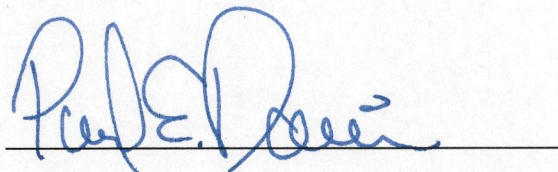
The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the RespondentS shall submit a written request to be received a minimum of THIRTY (30) DAYS in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. The director will reply to the Respondents' request in writing. Should the

Respondents fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Further, the Respondents are advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this

01 day of July, 2008.

A handwritten signature in blue ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allow the Respondents to secure review (appeal) of this ORDER AND ASSESSMENT. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date



the Respondents received this ORDER AND ASSESSMENT or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondents may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.